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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/444,889	11/22/1999	MICHAEL G. MIKURAK	AND1P367	9216

29838 7590 09/15/2005

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EXAMINER

VAN DOREN, BETH

ART UNIT	PAPER NUMBER
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3623

DATE MAILED: 09/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/444,889

Applicant(s)

MIKURAK, MICHAEL G.

Examiner

Beth Van Doren

Art Unit

3623

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 July 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18,22,28 and 32-55 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18,22,28 and 32-35 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The following is a Final office action in response to communications received 07/01/2005. Claims 18, 22, 28, and 32-37 have been amended. Claims 17, 21, 23, 26, 27, and 31 have been canceled. Claims 38-50 have been added. Claims 18, 22, 28, and 32-55 are now pending in this application.

Response to Amendment

2. Applicant's amendments and cancellation of claims is sufficient to overcome the 35 USC § 112, first and second paragraph, rejections set forth in the previous office action. However, new 35 USC § 112, first and second paragraph, rejections have been established below, as necessitated by amendment.

3. Applicant's cancellation of claims 23, 26-27, and 31 is sufficient to overcome the 35 USC § 101 rejections of these claims set forth in the previous office action. However, applicant's amendments to claims 22, 28, and 34-37 are not sufficient to overcome the 35 USC § 101 rejections of the previous office action. The 35 USC § 101 rejections have been reasserted below and amended to include the new and amended claims currently presented by the applicant.

4. Applicant's amendments to claims 22 and 27 and cancellation of claim 17 are sufficient to overcome the claim objections of the previous office action.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Art Unit: 3623

6. Claims 18, 22, 28, and 32-55 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention.

Claims 18, 22, 28, and 32-55 include the term "supply chain environment manager". The subject matter relating to a environment manager was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventors, at the time the application was filed, had possession of the claimed invention. Furthermore, it would be unclear to one skilled in the relevant art as to what specifically a "manager" is (i.e. a person, software, etc.).

The specification does not disclose support for the elements of claims 18, 22, 28, and 32-55 being used together in the different scopes set forth in the claimed invention. Specifically, pages 46-47 of the specification and in figure 11 discuss the scheduling steps of claims 38, 44, and 50. In summary, this section discloses one or more notices of recommended maintenance and service are received from one or more manufacturers and one or more requests for maintenance and service are received utilizing the network from one or more service providers. Maintenance and service is scheduled using the notices and the requests. The schedule is transmitted to the manufacturers and the service providers using the network in operation. The availability of the manufacturers may be monitored and the manufacturers are scheduled based on their availability. In another embodiment of the present invention, the progress of the manufacturers in completing scheduled maintenance and service may be monitored and the

Art Unit: 3623

schedule adjusted according to the progress of the manufacturers. The adjusted schedule is then transmitted using the network to the manufacturers and the service providers. Skipping ahead to page 438 of the specification, receiving feedback from users is discussed, however this feedback is from users of a website, not from users, such as manufacturers and service providers, who have had scheduled maintenance performed. Figure 104 and page 435 discuss the updating and the synchronizing elements found in newly added dependent claims. These elements, however, are part of a method for administering an e-Commerce system on a network, and have no connection to scheduling maintenance and service between a service provider and a manufacturer, wherein a notice is received from a first user and a request is received for a second user in order to create and transmit a schedule. In contrast, this section of the specification discloses items including merchandising content, currency exchange rates, tax rates, and/or pricing of an e-commerce system that are updated at predetermined intervals. Further, the specification discloses that entities including server processes, disk space, memory availability, CPU utilization, access time to a server, and/or a number of connections of the e-commerce system are monitored and not specifically optimized during any scheduled maintenance and service. Examiner was unable to find any recitation of using these disparate pieces and steps in connection with other, as currently claimed. In contrast, the specification seems to disclose a scheduling function concerning manufacturers and service providers using a supply-chain network very separately from the data updating and synchronizing performed for an e-commerce website.

Appropriate clarification (including reference to supporting excerpts from the specification) and/or correction (e.g. in the form of claim amendments) are required.

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 18, 22, 28, and 32-55 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

8. Claims 18, 22, 28, and 32-55 incorporate the term “supply chain environment manager.”

As explained above, it is unclear as to what specifically a framework manager is or entails.

Without understanding what, specifically, a “environment manager” is, it is unclear as to how a method or software per se can cause a “manager” to perform the steps of claims 38, 44, and 50. Claim 38 specifically recites “an e-commerce supply chain environment manager to provide maintenance and service for a network-based e-commerce supply-chain environment”, with any steps in the body of the claim how or what “causes” the manager to perform the steps. For example, if the manager is software then some event or person must enact the framework manager to perform its programmed functionality.

9. Claim 33 recites that the stored data is “indexed according to each framework user’s profile”. There is insufficient antecedent basis for this limitation in the claim. For examination purposes, this limitation has been construed as --indexed according to each environment user’s profile--. Correction is required.

10. Claims 22, 34-35, and 44-49 are computer system claims comprising “logic executable of a computer system”. It is unclear as to how mere “logic” elements (or software per se) makes up a system. Clarification is required.

Claim Rejections - 35 USC § 101

11. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

Claims 18, 22, 28, 32-55 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. The recited process must somehow apply, involve, use, or advance the technological arts in order to be statutory.

Claims 18, 32-33, and 38-43 are not within the technological arts. Claim 38 recites "a method for an e-commerce supply chain environment manager to provide maintenance and service" wherein the method includes receiving notices for recommended maintenance and service, receiving requests for maintenance and service, scheduling maintenance and service, transmitting a schedule, and performing scheduled maintenance and service. However, none of these steps specifically require the use of any technology to be performed. Further, as discussed above, the environment manager could be merely a person. Claims 18, 32-33, and 39-43 depend from claim 38 and contain the same deficiencies. Therefore, it respectfully submitted that claims 18, 32-33, and 38-43 are not within the technological arts.

Claims 22, 24-25, and 44-49 recites a computer system claims comprising “logic executable of a computer system”. A collection of “logic” is software per se, wherein software is considered to be non-statutory subject matter. Examiner further points out that the “logic” is recited as “executable” (i.e. capable or having the ability to be executed, but not actually and functionally executed). Thus, the “logic” is not specifically executed, further supporting that the claim is directed towards software per se. Therefore, since software is not deemed to be statutory subject matter, it is respectfully submitted that claims 22, 24-25, and 44-49 are directed towards non-statutory subject matter.

Claims 26-37 and 50-55 recite “a computer program embodied on a computer readable medium and executable on a computer” comprising code segments. A collection of code segments is software per se, which is non-statutory subject matter. Examiner points out that as claimed, the computer program is recited as “executable” (i.e. capable or having the ability to be executed, but not actually and functionally executed). Therefore, the “code segment” is not specifically executed, further supporting that the claim is directed towards software per se. Therefore, since software is not deemed to be statutory subject matter, it is respectfully submitted that claims 26-37 and 50-55 are directed towards non-statutory subject matter.

Claim Rejections - 35 USC § 102

12. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 18, 22, 28, 32-38, 40-44, 46-50, and 52-55 are rejected under 35 U.S.C. 102(e) as being anticipated by Sekizawa (U.S. 6,430,711)

13. As per claim 38, Sekizawa discloses a method for an e-commerce supply chain environment manager to provide maintenance and service for a network-based e-commerce supply-chain environment between a first environment user and a second environment user, comprising:

(a) receiving from a plurality of environment users a plurality of notices for recommended maintenance and service (See column 2, lines 50-67, column 3, lines 1-25, column 4, lines 50-65, column 5, lines 40-50, and column 6, lines 55-65, wherein users recommend maintenance and service using the network);

(b) receiving from a plurality of environment users a plurality of requests for maintenance and service (See figure 28 and column 2, line 50-column 3, line 28, column 4, line 50-column 5, line 10 and 40-50, and column 6, lines 1-6 and 55-65, column 7, lines 25-50, and column 8, lines 1-17, wherein the second framework user requests maintenance and service);

(c) scheduling maintenance and service using the plurality of notices and the plurality of requests (See column 2, line 50-column 3, line 25, column 4, lines 50-65, column 5, lines 40-50,

Art Unit: 3623

column 6, lines 55-65, column 7, line 59- column 8, line 36, wherein maintenance and service is scheduled using the requests and notices);

(d) transmitting a schedule to the plurality of users who requested or recommended maintenance (See figure 28 and column 2, lines 50-67, column 3, lines 1-28, column 4, lines 50-65, column 5, lines 40-60, and column 6, lines 55-65, column 7, lines 59-67, and column 8, lines 1-36, wherein the scheduling is made known to the users via the status views of the network or direct communication);

(e) performing scheduled maintenance and service of the e-commerce supply chain environment (See column 4, lines 5-25 and 40-62, column 7, lines 35-50, and column 8, lines 1-7, wherein maintenance is performed. See also figure 20 and column 2, line 50-column 3, line 25 and 45-55, column 5, lines 40-50, and column 6, lines 55-65, wherein other maintenance is performed).

14. As per claim 18, Sekizawa teaches performing load-balancing services that initiate and stop processes as utilization levels vary in the e-commerce supply chain (See column 6, lines 10-35, which discloses load balancing).

15. As per claim 32, Sekizawa teaches wherein the step of performing scheduled maintenance and service includes indexing received feedback from environment users (See figures 4, 9-12, and 30, column 7, lines 59-67, column 19, lines 35-45, column 20, line 40-column 21, line 10, wherein the user is given a change request, the system has a mail box for receiving change requests, and the system saves this data. See also column 22, lines 25-55, column 23, lines 1-30, column 33, lines 35-65, column 34, line 55-column 35, line 25).

Art Unit: 3623

16. As per claim 40, Sekizawa teaches wherein the step of performing scheduled maintenance and service of the e-commerce supply chain environment comprises synchronizing data stored separately from the e-commerce supply chain environment with data stored in the e-commerce supply chain environment (See column 4, lines 5-25 and 40-62, column 7, lines 35-50, and column 8, lines 1-7, wherein the external, global, data and the local data is synchronized).

17. As per claim 41, Sekizawa teaches wherein the step of performing scheduled maintenance and service of the e-commerce supply chain environment comprises optimizing at least one operation of the environment from the group consisting of server processes, disk space, memory availability, CPU utilization access time to a server, and a number of connections in a network-based supply chain for efficient system-operation and problem prevention (See figure 20 and column 2, lines 50-67, column 3, lines 1-25 and 45-55, column 5, lines 40-50, and column 6, lines 55-65, wherein at least one operation of the environment is monitored for optimization, including memory availability).

18. As per claim 42, Sekizawa teaches wherein the step of performing scheduled maintenance and service of the e-commerce supply chain environment comprises sending feedback response requests to the plurality of environment users of the e-commerce supply-chain environment (See figures 4, 9-12, and 30, column 7, lines 59-67, column 19, lines 35-45, column 20, line 40-column 21, line 10, column 22, lines 25-55, column 23, lines 1-30, column 33, lines 35-65, column 34, line 55-column 35, line 25, wherein the user is given a change request and there is a mail box for receiving change requests. Also, the user can input information requested by the system, such as error information, status information, customer information, etc.).

Art Unit: 3623

19. As per claim 43, Sekizawa teaches searching the data stored in the e-commerce supply chain environment prior to synchronization (See column 4, lines 5-25 and 40-62, column 7, lines 35-50, and column 8, lines 1-7, wherein the status data of the local machines are searched prior to the synchronization).

20. As per claim 33, Sekizawa teaches wherein the data stored in the e-commerce supply-chain environment is indexed according to each environment user's profile (See figures 4, 9-12, and 30, column 7, lines 59-67, column 19, lines 35-45, column 20, line 40-column 21, line 10, wherein information is entered in the system and saved based on the user profile. For example, the user is given a change request, the system receives change requests, and the system saves this data with the profile of the user. See also column 22, lines 25-55, column 23, lines 1-30, column 33, lines 35-65, column 34, line 55- column 35, line 25).

21. Claims 44, 22, 34, 46-49, and 35 recite equivalent limitations to claims 38, 18, 32, 40-43, and 33, respectively, and are therefore rejected using the same art and rationale as applied above.

22. Claims 50, 28, 36, 52-55, and 37 recite equivalent limitations to claims 38, 18, 32, 40-43, and 33, respectively, and are therefore rejected using the same art and rationale as applied above.

Claim Rejections - 35 USC § 103

23. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 39, 45, and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sekizawa (U.S. 6,430,711) and Haluska (U.S. 5,638,519).

24. As per claim 39, Sekizawa teaches wherein the step of performing scheduled maintenance and service of the e-commerce supply chain environment comprises updating internal data items stored in the environment (See column 4, lines 5-25 and 40-62, column 7, lines 35-50, and column 8, lines 1-7, wherein the internal data items of the local framework are updated). However, Sekizawa does not expressly disclose and Haluska discloses updating internal data items selected from the group consisting of merchandising content, currency exchange rates, tax rates, and pricing information (See figures 4-6, column 3, lines 25-40 and 45-65, column 5, lines 1-25, column 7, lines 35-60, and column 11, lines 35-65, wherein pricing information is updated);

Both Haluska and Sekizawa disclose manufacturers providing services and supplies to users of the network. Sekizawa further discloses the ability to update internal information such as the customer information. It is well known in marketing and sales to customize merchandising content and/or pricing information to the customer and the customer's information. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to update at least the merchandising content and/or the pricing information based on this change in customer information in order to more efficiently meet the needs of the customers of the system by maintaining universal and updated information accessible by all users of the network that correctly matches the needs/information about the customers. See column 2, lines 50-67, of Haluska and column 2, lines 45-67, of Sekizawa.

Art Unit: 3623

25. Claim 45 recites equivalent limitations to claim 39 and is therefore rejected using the same art and rationale as applied above.

26. Claim 51 recites equivalent limitations to claim 39 and is therefore rejected using the same art and rationale as applied above.

Response to Arguments

27. Applicant's arguments with regards to the rejections based on Sekizawa (U.S. 6,430,711) and Haluska (U.S. 5,638,519) have been fully considered, but they are not persuasive. In the remarks, Applicant argues that Sekizawa does not teach or suggest (1) application of a manager of the e-commerce supply chain environment that performs maintenance activities on the e-commerce supply chain environment.

In response to argument (1), Examiner respectfully disagrees. First, based on the discussion above with regards to the 35 USC 112, first and second paragraph, rejections, it is unclear as to whether the manager is a person or is a piece of software or hardware. Furthermore, while the term manager is recited in the preamble of claims 38, 44, and 50, the body of the claims contain no clear recitation that links the manager to the specific elements in the body of the claim. Therefore, the manager recitation taken as an intended field of use and has not been given patentable weight because the recitation occurs in the preamble. A preamble is generally not accorded any patentable weight where it merely recites the purpose of a process or the intended use of a structure, and where the body of the claim does not depend on the preamble for completeness but, instead, the process steps or structural limitations are able to stand alone. See *In re Hirao*, 535 F.2d 67, 190 USPQ 15 (CCPA 1976) and *Kropa v. Robie*, 187 F.2d 150, 152, 88 USPQ 478, 481 (CCPA 1951).

However, even if the term manager was given functional weight, Examiner points out that Sekizawa discloses a computer-implemented system with the capability of monitoring and servicing a plurality of machines. Therefore, Sekizawa does teach a computer-implemented manager unit.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Beth Van Doren whose telephone number is (571) 272-6737. The examiner can normally be reached on M-F, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tariq Hafiz can be reached on (571) 272-6729. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.


Art Unit: 3623

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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September 7, 2005


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